DOCKET FILE COPY ORIGINAL

EX PARTE OR LATE FILED

Building The Wireless Future™

June 28, 1996

CTIA

Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-8203 Fax
202-736-3256 Direct Dial

Randall S. Coleman
Vice President for Regulatory Policy and Law

RECEIVED

JUN 28 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: ***Ex Parte* Presentation**
CC Docket No. 95-185 (Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers) and **CC Docket No. 96-98** (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)

Dear Mr. Caton:

On Friday, June 28, 1996, copies of the attached CTIA White Paper, "Telecommunications Competition: In the Midst of Plenty, It's Under Attack", and relater cover letter, were delivered to FCC Chairman Reed E. Hundt, Commissioner James H. Quello, Commissioner Susan Ness, Commissioner Rachelle B. Chong and the Commission employees listed below:

Rosalind Allen	Laurence Atlas	Rudolfo Baca
Lauren Belvin	Nancy Boocker	Karen Brinkmann
James Casserly	Jackie Chorney	John Cimko
James Coltharp	David Ellen	Michelle Farquhar
Joseph Farrell	David Furth	Donald Gips
Pamela Greer	Daniel Grosh	Michael Hamra
Regina Keeney	William Kennard	Linda Kinney
Blair Levin	Kathleen Levitz	Jane Mago
Jay Markley	Elliot Maxwell	Pamela Megna
Richard Metzger	Ruth Milkman	John Nakahata
Robert Pepper	Dan Phythyon	Gregory Rosston
David Siddall	David Solomon	D'Wana Speight
Peter Tenhula	Suzanne Toller	Michael Wack
Jennifer Warren	Stanley Wiggins	Christopher Wright

No. of Copies rec'd 0+1
List ABCDE

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the attachment are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Randall S. Coleman

Attachment

Building The Wireless Future™

CTIA

Cellular Telecommunications Industry Association
1250 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-8203 Fax
202-736-3256 Direct Dial

Randall S. Coleman
Vice President for Regulatory Policy and Law

June 28, 1996

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Re: **CC Docket No. 95-185** (Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers) and **CC Docket No. 96-98** (Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)

Dear Mr. Chairman:

The attached CTIA White Paper, "Telecommunications Competition: In the Midst of Plenty, It's Under Attack", highlights the harm to consumers and competition resulting from the current state of compensation arrangements for LEC-CMRS interconnection, and the hazards of FCC surrender of jurisdiction over these compensation arrangements to state regulatory authorities. Wireless services, by their nature, do not recognize political boundaries, and their service areas are multistate by FCC-design. It is imperative that regulatory authority over interconnection, the key component to the ability of wireless services to compete with local telephone monopolies, remain squarely within the federal sphere.

CTIA urges you to consider the attached information as you approach the important legal and policy decisions in the referenced proceedings.

Sincerely,

Randall S. Coleman

Attachment

Building The
Wireless Future™

CTIA

Cellular
Telecommunications
Industry Association
1250 Connecticut
Avenue, N.W.
Suite 200
Washington, D.C. 20036
202-785-0081 Telephone
202-785-0721 Fax

LEC-CMRS Interconnection WHITE PAPER No. 1
First Series

TELECOMMUNICATIONS COMPETITION: IN THE MIDST OF PLENTY, IT'S UNDER ATTACK

June 28, 1996

TELECOMMUNICATIONS COMPETITION: IN THE MIDST OF PLENTY, IT'S UNDER ATTACK

Everyone recognizes the value of competition. Congress, consumers, business users, investors, and wireless service providers recognize that competition generates affordable and innovative products and services to meet consumer needs. The ability of wireless telecommunications carriers to offer such competition is being systematically undermined by those with whom wireless carriers would compete as well as the same public service commissions which should be encouraging such competition.

A HISTORY OF IGNORING PRO-COMPETITIVE POLICIES

For 12 years, the local exchange carriers (LECs) have ignored the FCC's co-carrier policy for wireless providers -- refusing to compensate cellular companies for terminating calls originating on the landline networks. At the same time, these same LECs have insisted upon collecting precisely such charges for terminating calls originating on wireless networks. In some instances, the LECs have extracted from wireless carriers and customers surcharges ranging as high as 16 cents a minute. Even **the average per minute LEC termination charge --3 cents a minute -- is fifteen times the actual cost of terminating this traffic.**[1]

The FCC has repeatedly ruled that wireless-LEC interconnection relationships are carrier-to-carrier relationships, and has emphasized that "we will judge the appropriateness of the given arrangement using as a guide the existing compensation agreements of connecting BOCs and [independent LECs]."[2] Those agreements generally create a mutual obligation to terminate the other's traffic at no charge (called "bill and keep"). During the ten years prior to passage of the Telecommunications Act of 1996, the LECs never lived up to this co-carrier treatment of wireless providers, the states never held them to that standard, and the FCC did not enforce its policy position.

THE STATES RULE ON CLECs BUT IGNORE WIRELESS

The state PUCs and the District of Columbia have not helped address the anti-competitive interconnection arrangements imposed on wireless carriers by wireline carriers. Even the states that are adopting pro-competitive telecommunications policies are limiting their reach to new wired (or fiber-based) companies. These "competitive LECs" or "alternative LECs" (CLECs or ALECs) are benefiting from the recognition that interconnection produces benefits for both new entrants and incumbent LECs (ILECs).

---

[1]Reply Comments of TRACER, CC Docket No. 95-185, filed March 22, 1996, at p.11

[2]*Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* No. CL-379, 63 RR 2d (P&F) 7, 22 at para 49 (1987), aff'd and clarified on recon., 4 FCC Rcd. 2369 (1989). *See also Report and Order, Cellular Communications Systems,* CC Docket No. 79-318, 86 FCC 2d 469, 496 (1981), *recon.*, 89 FCC 2d 56 (1982); *FCC Policy Statement on Interconnection of Cellular Systems,* 59 RR (P&F) 2d 1276 (1986).

As a result, these policymakers are conducting proceedings that establish or encourage reciprocal compensation by CLECs and ILECs for the termination of traffic originating on each others' networks, and at much lower interconnection rates -- either bill and keep, or a fraction of current interconnection charges applied to Commercial Mobile Radio Service (CMRS) providers.

States Adopting Bill and Keep	States Proposing Bill and Keep
California	Arizona
Connecticut	Colorado
Michigan	
Ohio	
Oregon	
Texas	
Virginia	
Washington	

Notably, in 17 states these proceedings have produced or approved rates for CLEC and ILEC interconnection that average less than one-third of the average rates LECs charge CMRS providers, and are reciprocal. And in eight states, with over 90 million inhabitants, the state PUCs or legislatures have implemented policies of "mutual traffic exchange," or reciprocal termination, in which the effective rate paid by both CLECs and ILECs for terminating local traffic is zero.

YET EVEN THESE PRO-COMPETITIVE STATES HAVE IGNORED LEC-CMRS INTERCONNECTION – SOMETIMES TELLING WIRELESS CARRIERS THEY HAVE NO JURISDICTION

By limiting themselves to adopting rules for LECs that only address CLECs (and lower their interconnection costs), these PUCs are putting wireless competitors at a marked disadvantage. Wireless pays an average of 3 cents per minute to interconnect with a LEC, while in every state which has recently acted, CLECs pay less, or pay nothing.

In Connecticut, for instance, the state DPUC argues that it cannot regulate LEC-CMRS interconnection because the 1993 amendments to the Communications Act made regulation of wireless entirely an FCC responsibility, and removed state authority.[3] The wireless industry does not fault such an interpretation -- but it means that the FCC MUST fill this regulatory void.

MOVEMENT BY THE STATES TO RE-REGULATE WIRELESS

In its decision not to regulate LEC-CMRS interconnection, the Connecticut DPUC telegraphed its real intentions. In its order providing for initial bill and keep, and possible later mutual cash compensation, for CLECs and ILECs, the DPUC refused to

[3] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, Section 6002(b) (OBRA).

extend similar treatment to wireless carriers -- unless they filed for state certification as CLECs -- and agreed to submit to the entire range of state regulations (rate tariffing, entry certification, annual filing requirements, etc.) that Congress and the FCC preempted (and the courts agreed) as unnecessary and burdensome.[4] The DPUC declared that:

> In the absence of authority to impose local service obligations and responsibilities on wireless carriers, the Department will not authorize mutual compensation between SNET and such carriers. Unless and until a wireless carrier seeks certification in Connecticut as a CLEC, such wireless carrier is limited to the mutual compensation provided for by federal law and the rules and regulations of the FCC, i.e., compensation for interstate traffic.[5]

Even when wireless providers and LECs are able to reach agreements on compensation arrangements, and recognize that the proper jurisdiction for these agreements is federal, the states have stepped in to assert control. Ameritech and Southwestern Bell Mobile Systems reached a mutual compensation agreement in March 1996, which they recognized as "not entered into pursuant to a request for interconnection under Section 251(c)(2) of the Telecommunications Act of 1996 . . . and [which] does not require approval by a state commission under Section 252(3) of the Act."[6] But, under pressure from the Illinois Commerce Commission, the two parties to the agreement deleted their stipulation as to federal jurisdiction, and were forced to submit the revised agreement to the state commission for approval.[7]

If the FCC does not exert its federal authority it puts the CMRS carriers in a Catch-22 situation. They can accept the unacceptable status quo, or they can "voluntarily" submit themselves to re-regulation by the states.

STATE INACTION CAUSES LOSS OF IMMEDIATE CONSUMER BENEFITS

There's a bitter irony in this -- the state agencies that are supposed to advance competition are adopting policies with the opposite result. The District of Columbia and states like Connecticut have used their authority to establish regulations that discriminate against carriers, disregarding the consumer interest in innovative and affordable wireless services.

---

[4] *See e.g., Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers in the State of Connecticut, Report and Order,* 10 FCC Rcd. 7025, at 7055-7057 (1995), *aff'd sub nom.* CONNECTICUT DEPARTMENT OF PUBLIC UTILITY CONTROL v. F.C.C., Docket No. 95-4108, (2d Cir. March 22, 1996).

[5] *Decision*, DPUC Investigation into Wireless Mutual Compensation Plans, Docket No. 95-04-04, September 22, 1995, at p.16 (Connecticut Decision).

[6] Agreement Between Ameritech and SOUTHWESTERN BELL MOBILE SYSTEMS for Mutual Compensation for Local Calling in Illinois, March 22, 1996, at Section 7.1

[7] *See* Letter from Thomas E. Wheeler, CTIA, to the Honorable Reed E. Hundt, FCC, June 7, 1996, at p.3.

While alternative wireline competition will develop over time -- wireless is here now. In most states, CLECs still have to build out their systems and begin to develop a broad customer base. In contrast, wireless carriers already have substantial systems in place and rapidly expanding numbers of subscribers. Indeed, over 13% of the American public now uses wireless service.[8]

The Consumer Federation of America has noted that the institution of bill and keep nationally would produce an annual savings to wireless customers in the range of $1 billion. And it would speed the day when wireless can compete head-to-head with local wireline telephone service.

The need for federal wireless policy was reinforced on June 25 when the mayor of the District of Columbia vetoed a measure that would have opened the city's $350 million local telephone market to competition. Amazingly, the mayor's rationale for the veto was his desire to give the local Public Service Commission more power to regulate the business activities of its new competitors. The misguided actions of the Mayor and the actions of some state PUCs send a clear signal that when left alone, the District of Columbia and some states will thwart the intent of Congress to create competitive telecommunication markets.

WIRELESS SERVICES ARE FUNDAMENTALLY INTERSTATE SERVICES -- WHICH STATE REGULATION THREATENS TO UNDERMINE

By their very nature, wireless telecommunications are interstate. Radio waves do not recognize political boundaries, wireless carriers operate across state boundaries, and wireless markets are interstate in nature -- both by design (with respect to PCS) and by evolution in response to consumer needs (with respect to cellular). Over 90% of the American public lives in PCS MTA license areas which are multistate. The re-insertion of state regulation into wireless-LEC relationships risks destroying the vision of a nationwide telecommunications policy dedicated to promoting consumers' interests through competition -- a vision that was at the heart of the 1993 Communications Act Amendments and that was not changed by the Telecommunications Act of 1996.

The new PCS competitors have announced their intention to offer seamless service over multistate regions. They have been particularly critical of the impact differing state PUC interconnection rules and pricing would have on their businesses, particularly their marketing, on top of the long delays they would face if forced into the state interconnection process: private negotiations with LECs, appeal to state PUCs, and final appeal to US courts.[9]

Congress specifically preempted state regulation of wireless in 1993, which it perceived as threatening to undermine competition. Between 1994 and 1995, the FCC

---

[8] See U.S. Wireless Industry Survey Results: More Than 9.6 Million Customers Added in 1995, CTIA Release, March 25, 1996.

[9] Public Statement of Daniel Riker, CEO, Pocket Communications, June 25, 1996.

conducted seven proceedings examining evidence submitted to it by the states and by wireless service providers, and concluded that the states had not demonstrated that their regulation of wireless were necessary to protect the consumer interest.[10] But the regulatory impulse -- or the regulators' desire for a place in the sun -- is hard to restrain. Connecticut's retaliation against wireless providers is an example of this.

In implementing Congress' mandate, the FCC concluded that: "Success in the marketplace . . . should be driven by technological innovation, service quality, competition-based pricing decisions, and responsiveness to consumers' needs -- and not by strategies in the regulatory arena."[11] But the FCC and the states may force wireless carriers to return to the regulatory arena, where the regulators -- and not consumers -- will make the decision of who can compete in the marketplace or will perish in the hearing room.

THE FCC HAS JURISDICTION OVER WIRELESS SERVICES -- IT MUST NOT DROP THE BALL

Congress has established a solid and separate basis for FCC jurisdiction over wireless carriers and wireless services, predicated upon the differences between those services and traditional landline telephone services and their fundamental technologies.

Based on its plenary jurisdiction under Section 332, which was not repealed or amended by the Telecommunications Act of 1996, the FCC made a strong proposal on CMRS-LEC interconnection in December of 1995. Faced with a firestorm of LEC lobbying, the state PUCs have switched gears and claimed that they should and do have jurisdiction over wireless-LEC interconnection. And the FCC is reportedly rethinking its position as well.

It is understandable that one group of regulators will be sensitive to the interests of another group of regulators. But "turf" is not a sound basis for public policy, and an unwise and unnecessary surrender of FCC jurisdiction over wireless telecommunications to the states would be disastrous, not only for the wireless industry, but for all telecommunications consumers.

The state commissions have already demonstrated their unwillingness to implement national policy, even with guidance from the FCC. The FCC's interconnection policies already state that wireless carriers are entitled to mutual compensation with LECs. It made these rulings in 1981, 1986, 1989 and 1994.[12] But it has never effectively enforced

---

[10] *See e.g., Report and Order,* 10 FCC Rcd. 7025, at 7055-7057 (1995).

[11] 9 FCC Rcd. 1411, at 1420 (1994).

[12] *See Report and Order, Cellular Communications Systems,* CC Docket No. 79-318, 86 FCC 2d 469, 496 (1981), *recon.*, 89 FCC 2d 56 (1982); *FCC Policy Statement on Interconnection of Cellular Systems,* 59 RR (P&F) 2d 1276 (1986);.*Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* No. CL-379, 63 RR 2d (P&F) 7, 22 at para 49 (1987), *aff'd and clarified on recon.*, 4 FCC Rcd. 2369 (1989); *CMRS Second Report and Order, In the Matter of*

this policy, and the states have never complied with it. A toothless restatement of that policy -- or a outright surrender of jurisdiction to the states -- is fruitless. It is essential that the FCC assert federal jurisdiction, recognizing the interstate nature of wireless services.

At their best, state policies are all over the map. In fact, the attached map shows that state regulators have made the map of the US a patchwork of inconsistent regulations. How will consumers -- and how will providers -- be able to reconcile the impact of dissimilar rate regulations across their multistate wireless service areas? The FCC alone can establish a uniform national policy for the wireless industry and wireless consumers. That policy may ultimately mirror (or be mirrored by) the rules and timetables governing wireline services, but it is and must be based on the entirely separate legal authority the FCC has under Section 332 of the Communications Act and it must establish federal authority as the final arbiter.

Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd. 1411, 1499 para. 232 (1994).

Where CLECs Enjoy Reciprocal Treatment Via Mutual Compensation or Mutual Traffic Exchange